

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Penalty Relief
Against:**

Pedro Carrillo, M.D.

**Physician's and Surgeon's
Certificate No. G 55750**

Respondent.

Case No. 800-2021-075870

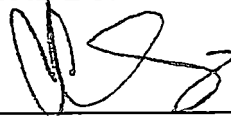
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 17, 2022.

IT IS SO ORDERED September 15, 2022.

MEDICAL BOARD OF CALIFORNIA



**Laurie Rose Lubiano, J.D., Chair
Panel A**

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Penalty Relief of:

PEDRO CARRILLO, M.D.

Physician's and Surgeon's Certificate Number G 55750

Petitioner.

Case No. 800-2021-075870

OAH No. 2022050906

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 18, 2022.

Petitioner Pedro Carrillo, M.D., represented himself.

Robert W. Lincoln, III, D.A.G., represented the Attorney General of the State of California pursuant to Government Code Section 11522.

The ALJ heard testimony and received documentary evidence. The record was closed and the matter was deemed submitted on July 18, 2022.

SUMMARY

Petitioner seeks early termination of his five-year probation which became effective on February 14, 2019. Petitioner clearly and convincingly demonstrated rehabilitation from his crimes, which occurred more than 10 years ago and were the basis of his probation. The public therefore will not be endangered if petitioner's medical license is restored.

FACTUAL FINDINGS

Background

1. The Medical Board of California (Board) initially issued Physician's and Surgeon's Certificate Number G55750 (license) to petitioner on August 19, 1985. The Board reissued the license on February 14, 2019, with probation terms. The license is scheduled to expire on February 28, 2023.

2. As a condition of granting licensure to petitioner on February 14, 2019, the Board immediately revoked petitioner's license, stayed the revocation, and placed the license on probation for five years in a Decision and Order effective February 14, 2019 (2019 Probation Order). The 2019 Probation Order's conditions included petitioner's participation in the Professional Enhancement Program (PEP) at petitioner's expense, taking additional education courses, maintaining records and access to records for all controlled substances ordered, prescribed, dispensed, or administered, and refraining from solo practice, practicing by telemedicine, and supervising nurse practitioners or physician's assistants.

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3. The 2019 Probation Order arose from petitioner's guilty plea to, and 2014 felony convictions of, violating section 846 of Title 21 of the United States Code, conspiracy to distribute controlled substances, i.e., testosterone and human growth hormone (HGH), and section 371 of Title 21 of the United States Code, conspiracy to defraud the United States. Based on his guilty pleas, the United States District Court Southern District of Florida West Palm Beach Division sentenced petitioner to serve four months in a federal minimal security prison with a year of supervised release after he completed his prison term.

4. None of the police or court records reflecting petitioner's arrest or criminal conviction were made available at the hearing. According to petitioner, sometime before September 2011, an individual contacted him about working as an independent contractor for a hormone replacement company and he agreed to do so. For each client, the company sent him a medical history, a copy of a physical examination, and a preferred prescription for testosterone replacement, including dosages and regimens. Petitioner reviewed the documentation, then spoke with the client, either by telephone or Skype. Petitioner signed off on the prescriptions even though many of the clients lived outside of California and he had not examined them personally. The prescriptions included testosterone, HGH, or HGH precursors.

5. Petitioner was arrested along with other doctors working for the company, the company owners, and the company pharmacy. His first court hearing was in 2011. Petitioner voluntarily appeared in Florida where the company was based and pleaded guilty in exchange for a reduced sentence and probation. He cooperated with the federal authorities and testified in the trials against the company owners and pharmacy. He was convicted on February 14, 2014, and served his sentence without incident.

6. Petitioner surrendered his license in 2012 after he was charged with the crimes leading to his guilty pleas. In 2017, petitioner applied for reinstatement of his license. The Board granted his application pursuant to the 2019 Probation Order. As part of the 2019 Probation Order, petitioner agreed to a probationary license and waived his right to a Statement of Issues.

7. The 2019 Probation Order is scheduled to expire on October 17, 2024. It was extended by 246 days because of petitioner's period of non-practice between February 14, 2019, and October 17, 2019.

Petition

8. On February 27, 2021, petitioner filed a Petition for Penalty Relief seeking modification of or early termination of his probation (Petition). If the Board does not agree to end his probation early, petitioner requests the Board to remove the probation conditions requiring his continued participation in the PEP program and prohibiting him from practicing telemedicine.

Evidence at Hearing

9. Petitioner is 64 years old. He obtained his undergraduate degree from Yale University in 1980 and his medical degree from the University of California Irvine Medical School in 1984. He earned his board certification in family practice and was recertified in 1994, 2002, and 2009. Petitioner has been unable to recertify since the re-issuance of his license because of his probationary status.

PRE-CONVICTION CONDUCT

10. Before his arrest, petitioner practiced family medicine in a variety of medical settings. He was the Chief Resident of the Community Clinic of Orange County

for two years after he graduated from medical school. He later worked as a solo practitioner and was a member of several medical practice groups. Petitioner additionally served on the executive, peer review, and advisory committees for many of the hospitals where he had privileges.

11. The Board placed petitioner's license on probation for three years in 2004 (2004 probation). The 2002 Accusation that triggered the probation charged petitioner with gross negligence, incompetence, and failure to maintain accurate and adequate records in the care and treatment of a single patient. According to the allegations in the Accusation, which petitioner admitted were true, the patient had complained of a headache during an exam by petitioner on October 12, 1998, and in a follow-up exam on October 20, 1998, scheduled to check the patient's blood pressure, the patient told respondent the headache improved with alcohol. Petitioner assessed the headache as due to stress and did not perform a neurological exam during either visit. On October 22, 1998, after collapsing at work, the patient was taken to the hospital in critical condition. He was diagnosed with a massive subarachnoid hemorrhage and died later that day. Petitioner was named in a medical malpractice lawsuit regarding his care, which was settled by petitioner's medical malpractice carrier.

12. The conditions of his 2004 probation required petitioner to enroll in and complete a clinical training program. Petitioner successfully completed the program and fulfilled the other requirements of his 2004 probation. The Board fully restored his license on April 28, 2007.

POST-CONVICTION CONDUCT

13. After his release from prison, petitioner obtained his master's degree in health education from Kaplan University in 2015. He worked as a health screener for

Health Fitness on a per diem basis from January 2013 until October 2019. During that time petitioner also worked as a production supervisor and health and safety officer at Airtech, a manufacturing company.

14. Petitioner felt lost not practicing medicine and applied for reinstatement of his license on November 27, 2017. After the Board granted petitioner's application on February 7, 2019, petitioner began work as a family medicine practitioner with Families Together of Orange County (FTOC) on October 17, 2019. FTOC is a nonprofit Federally Qualified Health Center that serves the medical, dental, and mental health needs of the underserved population in Orange County. FTOC's patients include those covered by Medicare, CalOptima, and Medi-Cal. Petitioner has not been disciplined during his employment at FTOC. He is the only bilingual physician employed by FTOC. During his tenure, he has worked on several Mobile Health Clinics serving homeless shelters as well as unhoused individuals on the street. He has also been involved in vaccinating unhoused individuals against COVID-19 and working at several FTOC vaccination clinics. Petitioner is currently based in FTOC's Tustin and Garden Grove offices. He works five days a week and treats approximately 15 to 20 patients a day.

15. Petitioner was reinstated to Medicare, Medicaid, and other federal health programs on August 6, 2019. He received a restricted DEA license on March 5, 2020. He does not write prescriptions for testosterone; if he believes a patient needs testosterone, he refers the patient to a urologist.

16. Petitioner is currently in compliance with all terms and conditions of the 2019 Probation Order.

17. As required by the 2019 Probation Order, petitioner has submitted a sample of his charts each month since January 2020 for review by PEP Faculty Mentor

Terri Cheng, M.D. under the UCSD PACE program. Dr. Cheng has thus far submitted three reports of petitioner's charting and medical practices to the Board, most recently on February 2, 2022. (Ex. 10, p. A141–A152.) In his most recent report, which covered the periods between April and December 2021, Dr. Cheng found petitioner's charts to be "overall satisfactory," his "exams overall thorough," and his plans appropriate. (*Id.*, p. A143.) He noted petitioner's "documentation has improved over the last year." (*Ibid.*) Dr. Cheng wrote that petitioner continues to apply recommendations to improve his documentation and "manages his patients appropriately with clear follow up plans and relevant patient education." Dr. Cheng also noted that during their calls, petitioner provides a "thorough history and rational thought process." (*Id.*, p. A144.)

18. Petitioner's testimony was candid and insightful. Concerning his 2004 probation, petitioner acknowledged he could have referred the patient to a specialist earlier. He now charts his patients' headaches more thoroughly and puts more thought into his charting in general. He also listens more carefully to his patients when they complain of headaches. He acknowledged that the 2004 probation made him a better doctor.

19. Petitioner described his conduct leading to his felony convictions as "wrong," "egregious," and "stupid." He agreed to work for the hormone replacement company because his then employer was "going downhill" in petitioner's words, and petitioner was financially overextended. The person who contacted petitioner about the position told him it was "easy money." Despite his initial hesitations, petitioner agreed to work for the company. However, six months in, petitioner realized he was doing something wrong but continued doing it, rationalizing that he had already broken the rules so it was too late to stop. Petitioner communicated with his clients by telephone or Skype. He usually never saw them, and many were bodybuilders who did

not medically require hormone treatment. Petitioner testified he should have personally examined the patients and made sure they needed the drugs they were seeking.

20. Petitioner expressed remorse for his illegal conduct and described how it negatively affected his family, his career, his finances, and his self-esteem. He recognized he dishonored his profession. His wife was forced to financially support him and she suffered health issues because of the stress. He acknowledged however his criminal convictions also taught him humility and erased any hubris he might have had in the past.

21. Petitioner currently lives modestly, and he is committed to living a quiet life. Petitioner would like to practice for another 10 to 12 years and would like to do so at FTOC. Petitioner specifically returned to medicine to serve the underserved population and intends to continue to serve them throughout the rest of his career. He has no interest in becoming a solo practitioner because he no longer wants to deal with financial and administrative issues. He has no financial or psychological need to do outside work for anyone else. Petitioner is also committed to following the rules. He described himself as extremely cautious because he does not want to do anything to jeopardize his license or hurt his wife. He realizes that practicing medicine is not just a job but is "who he is."

22. Petitioner believes he will be better able to serve his patient population if the Board released him from the terms and conditions of his probation. Telehealth, which he is currently prohibited to practice as part of his probation, now makes up a sizable part of FTOC's practice because of the COVID-19 pandemic. He is currently unable to help with these calls and, if he is the only medical provider on-site, he must tell the patients to wait until the following day when another provider may be available

or to go to the emergency room. Petitioner also cannot be a member of CalOptima, which interferes with his ability to send prescriptions to his patients' preferred pharmacies. In addition, petitioner believes his clinical and charting skills have met Dr. Cheng's standards as well as the standards of his medical colleagues at FTOC. Petitioner also wants to reinstate his board certification in family medicine, which he cannot do when his license is on probation.

23. Petitioner's petition is supported by Lowell Gordon, M.D., FTOC's Medical Director, who wrote a letter to the Board dated January 29, 2021. (Ex. 1, p. A10.) Dr. Gordon has been a practicing physician for 30 years and the FTOC Medical Director for four years. Dr. Gordon is aware of petitioner's criminal offenses and wrote that petitioner was "fully transparent about his deeds and his restrictions every step of the interview and hire process." (*Ibid.*) Soon after petitioner started work at FTOC, Dr. Gordon placed him in charge of a new program to provide medical services to homeless shelters and to be on-call to help Orange County workers who identified homeless individuals in need of medical assistance everywhere else in the County including underpasses and abandoned lots. Dr. Gordon praised petitioner's work, writing petitioner showed maturity, leadership, and sound judgment to ensure that his practice met the standard of care. At all times, petitioner stayed in constant contact with Dr. Gordon and was compliant with his probation restrictions. The program was a success, and FTOC expanded it to include a weekend shift, for which petitioner volunteered. Dr. Gordon stated FTOC has raised petitioner's salary twice because of his productivity, the positive attitude he brings to the FTOC team, and his willingness to work as a team player. Petitioner has completed and passed all online training required by FTOC, including training on fraud, waste, and abuse in the Medicare/Medicaid programs. Dr. Gordon characterized petitioner as a "high quality,

caring, collaborative and mature physician who has demonstrated the integrity necessary to be part of the health care team at FTOC." (Ex. 1, p. A11.)

24. Neil Schwartz, D.O., the Associate Medical Director at FTOC, also endorsed the granting of the petition in a letter. (Ex. 1, p. A12.) Dr. Schwartz has worked with petitioner at FTOC. He is aware of petitioner's prior criminal conviction and probationary status. According to Dr. Schwartz, petitioner has "shown a great compassion and care for patients, an excellent work ethic, and a diligence for chart work. He has on multiple occasions shown awareness and communicated his current limitations of practice." (*Ibid.*) Dr. Schwartz believes petitioner is an asset to the medical community and the community at large.

25. Parsia Jahanbani, the Mobile Operations Manager at FTOC, also praised petitioner's work and endorsed his petition in a letter dated February 26, 2021. (Ex. 1, p. A13.) As of the date of the letter, Mr. Jahanbani was responsible for all mobile medical and dental operations at FTOC, including direct supervision of the mobile medical staff of which petitioner was a part. Mr. Jahanbani observed petitioner's interactions with homeless shelter residents and transient patients. He noted petitioner "demonstrated an exceptional level of professionalism," treated every patient with "respect and dignity," even when they did not extend the same courtesy, and his bedside manners were "kind and compassionate." (*Ibid.*) Mr. Jahanbani wrote that petitioner stood out among the healthcare providers he had worked with in the past 16 years for his diligence and precision in medication management. Mr. Jahanbani highlighted petitioner's efforts, despite being considered high-risk, to continue treating patients at the homeless shelters during the throes of the COVID-19 lockdowns and to provide shelter residents with COVID-19 testing. Mr. Jahanbani described petitioner as a "great asset" to the FTOC organization and community and

commented that petitioner has “demonstrated honesty, integrity, and ethical principals [sp] at the forefront of his practice.” (*Id.*, p. A14.)

LEGAL CONCLUSIONS

1. Petitioner bears the burden of proving both his rehabilitation and his fitness to practice medicine. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar of Cal.* (1952) 39 Cal.2d 541, 546–547.) Petitioner’s burden of proof also requires a showing that he is no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Petitioner has sustained his burden of proof.

2. A person whose medical certificate has been placed on probation for more than three years may petition the Board for modification of penalty, including early termination of probation after two years have elapsed. (Bus. & Prof. Code, § 2307, subd. (a) & (b)(2).) As petitioner’s probation period is for five years and he filed his petition more than two years after the effective date of the 2019 Probation Order, his petition is timely.

3. Business and Professions Code section 2307, subdivision (e), states in pertinent part:

The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the

petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

4. Petitioner has made the necessary showing that it would be consistent with the public interest to allow early termination of his probation. (Factual Findings 1–14.) Petitioner's crimes occurred more than ten years ago. Petitioner fully acknowledged his wrongdoing. He expressed genuine remorse for the harm he caused the medical profession, his patients, and his family. He did not minimize his actions, and he explained how and why he will not repeat the same mistakes he has made in the past. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317.) Fully acknowledging the wrongfulness of past actions is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940; *In the Matter of Brown, supra*.)

5. Petitioner also demonstrated he is fit to practice medicine both in-person and by telemedicine without further monitoring. Petitioner has worked at FTOC for almost three years serving a challenging patient population without any issues. His PEP monitor has found petitioner's charting satisfactory and has not found any notable deficiencies in his practice. The healthcare providers with whom petitioner works have found him to be professional, knowledgeable, ethical, and compassionate. Although petitioner's license was subject to earlier discipline, the practice deficiencies leading to that discipline occurred more than 22 years ago, and petitioner successfully completed a practice course and the other probation terms addressing those deficiencies more than 15 years ago. There is no pattern of misconduct.

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6. In evaluating petitioner's rehabilitation and current character for honesty, his own testimony is examined to determine if it "exemplified sufficient rehabilitation." (*Seide, supra*, 49 Cal.3d at 940.) Petitioner's testimony did so. Petitioner showed great insight into his past lapses and crimes and the physical, financial, and emotional toll his actions have had on his family and himself. He also described how his life goals have changed. His passion for helping the underserved was evident. He made clear he will not take any action that would jeopardize his license or his ability to continue to serve his patients. The risk of petitioner repeating his mistakes or resorting to criminal behavior is remote.

7. Terminating petitioner's probation at this time will allow petitioner to provide improved care to the underserved community who are his chosen patients. Petitioner showed he is rehabilitated and no longer requires the oversight of probation to ensure public protection. Petitioner therefore sustained his burden of proof that he is entitled to early termination of his probation.

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ORDER

The petition of Pedro Carrillo, M.D., for early termination of probation is granted. Physician's and Surgeon's Certificate Number G 55750 is fully restored.

DATE: 07/29/2022



CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings